

FILED

OCT 08 2004

CLERK OF SUPERIOR COURT
BARTOW CO., GA.

**IN THE STATE COURT OF BARTOW COUNTY
STATE OF GEORGIA**

**PREVENTION AND MOTIVATION
PROGRAMS, INC.,**

Plaintiff,

v.

CHLDHELPUSA,

Defendant.

**CIVIL ACTION
FILE NO.**

04CV2787

COMPLAINT FOR DAMAGES

NOW COMES the Plaintiff, PREVENTION AND MOTIVATION PROGRAMS, INC., a Georgia nonprofit corporation (hereinafter referred to as "PAM" or the "Plaintiff") and brings this action for damages and other relief against the Defendant, CHLDHELP USA, a California nonprofit corporation (hereinafter referred to as "Childhelp" or "Defendant") and shows to this Court the following:

1.

The Plaintiff is a resident of Cartersville, Bartow County, Georgia.

2.

Defendant is a California nonprofit corporation with operations in various states including Virginia. Its Virginia operation is known as Childhelp USA Children's Center of Virginia which may be served by serving its Executive Director, Dayna Stewart, at 8415 Arlington Blvd., Fairfax, Virginia 22031.

3.

The Defendant is subject to the jurisdiction of this Court.

5.

On or about June 14, 2000, PAM entered into a written agreement with Defendant granting Defendant the exclusive right to offer and implement PAM's Good-Touch/Bad-Touch® curriculum for children (hereinafter referred to as "GT/BT") and to offer and implement GT/BT trainings for teachers in the Virginia and Washington, D.C. metropolitan area ("Territory"). In addition, Childhelp agreed that it would use the GT/BT curriculum as its exclusive primary prevention effort with children pre-school through middle school. The term of the Agreement was from July 1, 2000, through June 30, 2004, unless otherwise extended by mutual consent of the parties. A copy of the Agreement is attached hereto as Exhibit A, and by reference incorporated herein.

6.

The Agreement provided that PAM would be compensated based on a training fee, user and consultation fee, and costs for curriculum guides and kits, all as attached to the Agreement.

7.

The Agreement was amended by mutual consent of the parties on May 13, 2004, to reflect an extended term through June 30, 2008, and changes to the compensation rate paid to PAM. The Contract Addendum is attached hereto as Exhibit B and by reference made a part hereof.

7.

On June 28, 2004, the Defendant informed PAM that it was terminating the Agreement and would not continue to perform its obligations under the Agreement.

8.

Plaintiff has performed and continues to perform under the Agreement and Defendant continues to utilize PAM's GT/BT curriculum without compensation.

9.

On information and belief, PAM avers that the Training Fees, User and Consultation Fees, Curriculum Guide Fees and Curriculum Kit Fees due it amount to at least THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) with the exact amount to be determined by discovery (hereinafter referred to as the "Amount Due").

10.

Plaintiff has made demand upon the Defendants for the contractual fees due in the Amount Due.

11.

The Defendants have refused to pay the Plaintiff the Amount Due.

12.

The Plaintiff has fulfilled all of his obligations under the Agreement and continues to fulfill such obligations.

COUNT I - BREACH OF CONTRACT

13.

Plaintiff restates and realleges paragraphs 1 - 12 of his Complaint as if fully set forth herein.

14.

Defendant's actions constitute a breach of contract with Plaintiff.

15.

The breach of contract by Defendant has caused the Plaintiff to suffer damages at least in the Amount Due.

16.

The Plaintiff is entitled to recover from Defendant at least the Amount Due.

COUNT II - UNJUST ENRICHMENT

17.

Plaintiff restates and realleges paragraphs 1 - 16 of his Complaint as if fully set forth herein.

18.

Defendant continues to utilize PAM's curriculum and materials without payment therefore, thus Defendant has been enriched in the amount of at least the Amount Due.

19.

The Amount Due is a benefit to Defendant.

20.

For Defendant to retain the benefit of the Amount Due is unjust.

21.

The facts and circumstances of this case are such that Defendant in good conscience should make restitution to the Plaintiff in the Amount Due.

22.

The Plaintiff is entitled to restitution from Defendant in the Amount Due.

COUNT III – ATTORNEY’S FEES

23.

Plaintiff restates and realleges paragraphs 1 - 22 of his Complaint as if fully set forth herein.

24.

Pursuant to the terms of the Agreement, Defendant is liable to Plaintiff for all costs incurred in the collection of the indebtedness of Defendant, including, without limitation, attorney’s fees.

25.

Pursuant to O.C.G.A. § 13-1-11, PAM hereby demands and notifies Defendant that the obligations specified in the Agreement have matured, and PAM intends to enforce the attorney’s fees provisions contained therein. Unless the total indebtedness of \$267,840.00 is paid within ten (10) days of Defendant’s receipt of this Complaint, PAM will be entitled to recover fees of fifteen percent (15%) of the first \$500.00 and ten percent (10%) of the remainder.

WHEREFORE, having fully stated its Complaint against Defendant, Plaintiff respectfully prays that the following relief be granted:

- (a) That process issue and Defendant be served with a copy of this Complaint;
- (b) Under Count I of this Complaint, judgment in favor of Plaintiff and against Defendant in the Amount Due;
- (c) Under Count II of this Complaint, judgment in favor of Plaintiff and against Defendant in the Amount Due;
- (d) Under Count III of this Complaint, judgment in favor of Plaintiff and against Defendant for PAM’s costs and expenses, including attorney’s fees;

(e) For such other relief as this Court may deem proper and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Keith Logue', written over a horizontal line.

A. Keith Logue
SBN 456250
ATTORNEY FOR PLAINTIFF

3423 Weymouth Court
Marietta, Georgia 30062
(770)321-5750

This Agreement is made this 14th day of June, 2000 between a) Pam Church, PAM Executive Director, on behalf of Prevention and Motivation Programs, Inc. ["PAM"], and b) Michael Caplin, Childhelp Director of Eastern Operations, on behalf of ChildhelpUSA ["Childhelp"].

It is Agreed:

1. That Childhelp and PAM will collaborate in their efforts to provide children and adults the knowledge and skills they need to prevent or interrupt child abuse, with the ultimate goal of certifying an abuse prevention teacher on the staff of every school in the Authorized Region;
2. In consideration of the mutual promises and the payments outlined in this Agreement, PAM grants Childhelp the exclusive right to offer and implement the GOOD-TOUCH/BAD-TOUCH (R) ["GT/BT"] curriculum for children and to offer and implement GT/BT trainings for teachers in the Authorized Region of Virginia and the Washington, D.C. metropolitan area (including nearby Maryland suburbs), provided, however, that by mutual agreement in defined instances PAM may train and/or present GT/BT within the Authorized Region;
3. Childhelp will use GT/BT as its exclusive primary prevention effort with children pre-school through middle school and will use the name "GT/BT" when advertising or promoting Childhelp prevention efforts which include children in pre-school through middle school;
4. The Term of this Agreement shall be 48 months from July 1, 2000 through June 30, 2004. Any extensions of this Term shall be by mutual consent under terms to be agreed upon at the time of any such extension. This Agreement can be terminated prior to June 30, 2004 if Childhelp fails to meet the performance goals outlined in Appendix I of the Agreement, or if Childhelp fails to correct a material breach of this Agreement within 60 days of its receipt of written notice from PAM that it is in material breach of any paragraph of this Agreement;
5. For the right to present GT/BT to children, Childhelp will pay PAM annual User Fees, which Fees are defined in Appendix I of this Agreement. User Fees will be paid in two lump sums, 1/2 in July of each year of the Agreement and 1/2 in January of each year and is refundable only on a pro rata basis and only if PAM terminates the Agreement;

P. C.

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EXHIBIT A

Exhibit A - 7

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6. For the right to train and certify GT/BT teachers, Childhelp will pay PAM annual Training Fees, which fees are defined in Appendix 1 of this Agreement. Training Fees will be paid in two lump sums, 1/2 in July of each year of the Agreement, 1/2 in January of each year, will be non-refundable, and will be adjusted upwards in the event that Childhelp exceeds the total number of GT/BT teachers projected for each year of the Agreement;
7. For the certification of Childhelp staff as GT/BT teacher trainers, Childhelp will pay PAM a one-time fee of \$1,500/person certified and will, at Childhelp's expense, send that staff to PAM for a) completion of certification requirements outlined by PAM, and b) any annual meeting for teacher trainers that may be set-up by PAM ;
8. The authorization to train teachers is granted to Childhelp, not to individual staff persons, and any certified trainer who leaves Childhelp must renegotiate with PAM for the right to train;
9. Childhelp staff will adhere to the GT/BT curriculum when implementing the GT/BT curriculum with children or when training teacher-facilitators in the GT/BT curriculum and will only use curriculum materials created by PAM or approved by PAM in writing;
10. Childhelp and those it trains will purchase all GT/BT curriculum materials from PAM (except those specific items stated below) and Childhelp commits to each year purchase the minimum amounts of merchandise defined in Appendix 1 of this Agreement. These materials include the GT/BT Facilitator's Guide, Giant Storybooks, the Talking About Touch Cards, the videos [What Tadoo, What Tadoo With Secrets, Believe Me], Just For Parents, the coloring books, The Most Important Rule of All, and any other curriculum materials developed for the GT/BT curriculum. All will be available at list price and occasional bulk rate discounts;
11. The Body Safety Credit Cards© required by the curriculum may be printed by Childhelp at Childhelp's expense plus a fee of \$.10/card to be paid to PAM as soon as cards are received by Childhelp from the printers. Childhelp must immediately inform PAM of the date and size of any order to print Body Safety Credit Cards©;

P.C.

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12. Childhelp may purchase the video Break the Silence directly from the producer of that video;

13. Childhelp will provide a GT/BT Facilitator's Guide to every adult who participates in a GT/BT teacher training session and these Guides will remain the property of each participant;

14. Childhelp will provide PAM a monthly report containing a) copies of evaluations from every participant in all teacher training sessions, b) figures for total number of children taught, and c) total numbers for any pre- and post-test results from children;


15. All Childhelp PR and printed materials which refer to GT/BT will state that GT/BT is created and owned by PAM and will include PAM's address or phone number, and Childhelp will provide PAM a) a copy of all printed materials, b) information regarding media coverage of GT/BT, and c) information regarding Childhelp public addresses regarding GT/BT;

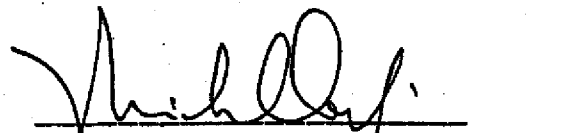
16. Childhelp will provide PAM a copy of any application for any funds from any source in which any reference to GT/BT is made.

17. Childhelp will consult with PAM regarding implementation challenges and marketing strategies.

18. The parties will make every effort to collaborate on the writing of at least one grant that helps both organizations deliver the GT/BT curriculum to children.

IN WITNESS WHEREOF the Parties set their signatures:


Prevention & Motivation Programs, Inc.
By Pam Church


ChildhelpUSA/Virginia
by Michael Caplin

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Appendix I

Schedule of Fees and Merchandise Purchase Commitments:

Goals:	Totals:	Payments:
Year I		
12 trainings	180 graduates	
15 trainees each	Training Fee @ \$50/trainee	\$ 9,000*
	User Fee & Consultation	\$ 3,000
	180 curriculum guides @ \$65	\$ 11,700
	100 curriculum kits @ \$510	\$ 51,000 ✓
Year II		
16 Trainings	240 graduates	
15 trainees each	Training Fee @ \$50/trainee	\$ 12,000*
	User Fee & Consultation	\$ 3,000
	240 curriculum guides @ \$65	\$ 15,600
	150 curriculum kits @ \$510	\$ 76,500
Year III		
20 Trainings	300 graduates	
15 trainees each	Training Fee @ \$50/trainee	\$ 15,000*
	User Fee & Consultation	\$ 3,000
	300 curriculum guides @ \$65**	\$ 19,500
	200 curriculum kits @ \$510**	\$102,000
Year IV		
24 trainings	360 graduates	
15 trainees each	Training Fee @ \$50/trainee	\$ 18,000*
	User Fee & Consultation	\$ 3,000
	360 curriculum guides @ \$65**	\$ 23,400
	300 curriculum kits @ \$510**	\$153,000
4-Year Totals		
Total Graduates	1,080	
Total Training Fees	\$ 54,000*	
Total Usage & Consultation Fees	\$ 12,000	
Total Guides 1,080 =	\$ 70,200**	
Total Kits 750 =	\$382,500**	

* Adjusted upwards if actual number of trainees exceeds projected totals.

** May be adjusted upwards if printing costs increase

P.C.

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Contract Addendum

The Agreement of 14 June 2002 between Prevention & Motivation Programs, Inc. [PAM] and ChildhelpUSA/Virginia [CH/VA] is hereby modified as follows:

Paragraph 4: The term of this agreement is changed from 48 to 84 months.

Paragraph 5: Delete existing language and replace with:
For the right to present GT/BT to children, CH/VA will pay PAM an annual user fee of \$3,000, payable in 12 equal monthly sums of \$250, which amount will be included with other monthly sums paid by CH/VA to PAM;

Paragraph 6: Delete existing language and replace with:
For the right to train and certify GT/BT teachers, CH/VA will pay PAM an annual Training Fee of \$5,040, payable in 12 equal monthly sums of \$420, which amount will be included with other monthly sums paid by CH/VA to PAM;

Paragraph 10: Delete Sentence 1 and replace with:
CH/VA and those it trains will purchase all GT/BT curriculum materials from PAM (except those specific items stated below) and CH/VA commits to each year purchase at least \$66,960 of merchandise, payable in 12 equal monthly sums of \$5,580, which amount will be included with other monthly sums paid by CH/VA to PAM.

Paragraph 19: Insert new paragraph reading:
In the event that CH/VA does not meet its contractual obligations, the venue of any legal dispute will be Cartersville, GA or the metro Atlanta GA area, and legal expenses incurred by PAM in enforcing this Agreement will be paid by CH/VA.

IN WITNESS WHEREOF the Parties set their signatures:


PAM By Pam Church
5/13/2002


CH/VA By Michael Caplin
5/8/02

EXHIBIT B